No. 90-1076

In the Supreme Court of the United States

OCTOBER TERM, 1990

JULIUS L. CHAMBERS, PETITIONER

v.

UNITED STATES DEPARTMENT OF THE ARMY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion in imposing sanctions against petitioner under the bad faith exception to the American Rule, under Rules 11 and 16 of the Federal Rules of Civil Procedure, and under 28 U.S.C. 1927, for maintaining baseless litigation against the government and failing to make an adequate investigation of the facts.

2. Whether Section 706(k) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(k), precludes the government from obtaining an award of attorney's fees as a defendant in a Title VII action in a case where the plaintiffs and their lawyers bring or maintain baseless or bad faith litigation.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A46) is reported at 914 F.2d 525. The opinions of the district court sanctioning petitioner are reported at 679 F. Supp. 1204 (Pet. Supp. App. A55-A536) and 123 F.R.D. 204 (Pet. Supp. App. A537-A598).

JURISDICTION

The judgment of the court of appeals was entered on September 18, 1990. Pet. App. A47-A53. The petition for a writ of certiorari was filed on December 17, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1980, two civilian employees at the United States Army base at Fort Bragg, North Carolina, contacted petitioner Julius L. Chambers regarding an administrative class action they had filed alleging racial discrimination in civilian employment practices at the base. Subsequently, the EEOC Complaints Examiner concluded that a class should be certified with respect to plaintiffs' claims of discriminatory promotions and reprisals. Pet. App. A8.

In September 1981, petitioner filed a class action complaint in district court on behalf of five class representatives alleging violations of Section 717(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16(a). The suit charged hundreds of military and civilian employees with racially discriminatory actions and "accused the Army of engaging in discriminatory practices in virtually every aspect of civilian employment[.]" Pet. App. A9. Massive discovery ensued. Approximately five million documents were produced, the majority by the Army. One hundred and forty-nine depositions were filed with the court. *Ibid.*

The district court denied class certification in August 1983, but permitted 44 persons to intervene as plaintiffs. After additional discovery, the district court entered a final pretrial order in December 1983, allowing 11 plaintiffs to withdraw. The claims of the remaining 38 individual plaintiffs were to be tried seriatim, with the first trial commencing in January 1984. Pet. App. A9-A10.

The third scheduled trial—that of plaintiff Sandra Blue—commenced in April 1984. On the eve of trial, Blue filed a pretrial brief indicating that she had abandoned several claims that she had designated for trial in the final pretrial order. At that point, the government filed a motion for sanctions with regard to Blue and two other plaintiffs, urging that plaintiffs and their lawyers had flouted pretrial pro-

cedures and prejudiced the government's defense by designating meritless claims in the final pretrial order that they abandoned at the start of trial. Pet. App. A10.

After the government filed the motion for sanctions, several of the remaining plaintiffs, including plaintiff Beulah Mae Harris, filed motions for voluntary dismissal of all their claims over the next few months. The government responded with additional requests for sanctions, asserting that the motions for voluntary dismissal were brought in bad faith and signified the baselessness of plaintiffs' underlying claims of race discrimination. The district court granted the plaintiffs' motions for voluntary dismissal, but reserved the question of sanctions. Pet. App. A10.

Trial of the claims that Blue had determined to pursue took place in April and September 1984. Trial of the claims of the remaining plaintiffs began in September 1984 and resumed, after a break, in February 1985. Ultimately, a settlement was reached in July 1985 which disposed of the merits of all of the plaintiffs' claims that had not been dismissed, except for those of Blue. The settlement also disposed of all of the pending motions for sanctions, except for those relating to Blue and Harris. Pet. App. A11. The district court conducted evidentiary hearings on the question of sanctions in March and April 1985. *Ibid.*

2. In an extraordinarily lengthy and detailed decision issued on December 28, 1987, the district court denied Blue's claims on the merits and imposed monetary sanctions totalling approximately $90,000 against Blue, Harris, and three of their attorneys, including petitioner. Pet. Supp. App. A55-A536. See Pet. App. A12.[1]

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[1] A fourth attorney was initially sanctioned as well, but all sanctions against her were eventually vacated in a subsequent order. Pet. Supp. App. A599-A603.

The district court found that Blue's claims were frivolous and that Blue had committed perjury at trial. In addition, the court found that Harris had committed perjury and a "fraud upon th[e] court," Pet. Supp. App. A402,[2] in the reasons offered for abandoning her claims. The court also found that plaintiffs' lawyers had engaged in sanctionable conduct by pursuing claims when reasonable preparation and examination of the materials obtained in discovery would have revealed their total lack of merit. Accordingly, the court determined that sanctions were warranted under the bad-faith exception to the American Rule, under Rules 11 and 16 of the Federal Rules of Civil Procedure, and under 28 U.S.C. 1927. See, *e.g.*, Pet. Supp. App. A494-A526.

3. The two sanctioned plaintiffs (Blue and Harris) and two of the three sanctioned lawyers (Chambers and an associate, Geraldine Sumter) appealed the sanctions order.[3] The court of appeals affirmed in part and reversed in part. At the outset, the court emphasized its concern that awards of sanctions should not chill the institution of difficult or novel civil rights claims. Pet. App. A15-A16. Noting the "momentous purpose" underlying Title VII, the court stressed that "[w]e are unwilling to witness the evisceration of this purpose through sanctions awarded in a manner that leaves a lasting reluctance on the part of plaintiffs to vindicate the legal rights which Congress gave them." *Id.* at A16. Nevertheless, because "no litigant can be allowed to abuse federal courts or opposing litigants with impunity," *id.* at A15, the court concluded that affirmance of substantial parts of the sanctions award was required.

The court first rejected the appellants' main contention: that "the mere establishment of a prima facie case of

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[2] See also Pet. Supp. App. A403 ("purposeful misstatements of fact").

[3] The third attorney sanctioned by the district court did not appeal the judgment against her, and paid the sanctions.

discrimination will by itself insulate litigants and their counsel from sanctions." Pet. App. A19. See *id.* at A18-A21. The court noted that establishing a prima facie case is an important factor, but is not dispositive. The reason is that a plaintiff could obtain evidence during discovery showing that the employer had a legitimate explanation for the challenged employment decision, and the plaintiff could lack any evidence that the employer's explanation was a pretext for discrimination. Under those circumstances, the court reasoned, the plaintiff's case would be frivolous, and it would be unreasonable to continue to press such a claim. *Id.* at A19-A20. The court found that this case featured precisely those circumstances; as the court of appeals explained, the district court did not base its award of sanctions simply on the initial filing of a frivolous claim, "but also on the prolonged maintenance of a frivolous suit well after the close of discovery." *Id.* at A21.

The court next rejected the claim that an award of sanctions to the government is precluded by Section 706(k) of Title VII, 42 U.S.C. 2000e-5(k), which permits a court to "allow the prevailing party, other than the [EEOC] or the United States, a reasonable attorney's fee." Pet. App. A21-A22. Agreeing with the decisions of the D.C. Circuit in *Copeland* v. *Martinez*, 603 F.2d 981 (1979), cert. denied, 444 U.S. 1044 (1980), and the Fifth Circuit in *Butler* v. *United States Department of Agriculture*, 826 F.2d 409 (1987), the court found "no intent in § 706(k) to preclude all awards of sanctions to the government no matter how egregious the conduct of the opposing party or counsel." Pet. App. A22.

After a review of the district court's findings, the court of appeals rejected the contention that the sanctions award against counsel was based on credibility determinations that could not have been foreseen by plaintiffs' attorneys. The court of appeals explained that "the district court made plain that the resolution of this case turned upon far more than

routine credibility determinations." Pet. App. A29. Quoting the district court, the court of appeals observed, *id.* at A29-A30 (quoting 679 F. Supp. at 1387):

> Defendant had produced an enormous amount of discovery—much of it clearly unrebutted by any credible evidence in plaintiffs' possession. . . . Counsel, certainly by this time (and with respect to Blue, well before) had no reasonable basis upon which to rely on either plaintiff. Significant gaps and inconsistencies existed in plaintiffs' respective versions of events mandating that counsel question their perception of discrimination. When conspiracy theories abound and every negative employment decision, whether effected by black or white, military or civilian personnel, is questioned on a racial basis, counsel have an obligation to inquire behind their client's claims. Here, access to investigate plaintiffs' stories was virtually unchecked. Yet, Harris' claims were filed, and Blue's continued, apparently without any objective thought as to their merit.

Concluding that the district court's extensive findings did not constitute an abuse of discretion, the court held that "counsel cannot simply rely on a client's patently incredible testimony when any reasonable investigation of the factual bases for the client's claims or examination of materials obtained in discovery would reveal the paucity and implausibility of the evidence." Pet. App. A31.[4]

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[4] Although the court of appeals upheld sanctions against petitioner, it overturned the award of sanctions against his associate on the basis of her inexperience and limited role in the litigation. Pet. App. A36-A38. The court of appeals also held that the district court had erred in awarding sanctions that would compensate the court for the abuse of judicial resources, *id.* at A40-A41; in sanctioning plaintiffs' counsel (but not the plaintiffs themselves) for the prosecution of the sanctions proceedings, *id.* at A41-A42; in sanctioning petitioner's law firm, *id.* at

ARGUMENT

In an unusually extensive opinion rooted in a massive set of detailed and well-documented findings of fact, see Pet. Supp. App. A55-A536, the district court in this case imposed sanctions against plaintiffs and their lawyers for their extraordinary abuse of the judicial process, including "patently perjurious" testimony, Pet. App. A25. In a balanced and carefully reasoned decision, the court of appeals affirmed in part and reversed in part the district court's sanctions order. The court of appeals' affirmance of sanctions against petitioner is correct, does not conflict with any decision of this Court or of another court of appeals, and presents no question warranting this Court's review.

1. Petitioner's primary contention is that the district court's award of sanctions is based upon the district court's credibility determinations regarding petitioner's clients. Petitioner argues, in essence, that an attorney should not be sanctioned because the trial court later finds his client incredible. As the court of appeals recognized, that argument fundamentally mischaracterizes the district court's holding, which turns "upon far more than routine credibility determinations." Pet. App. A29. The district court did not sanction petitioner merely because it did not accept his clients' version of events. Instead, the district court imposed sanctions based upon its extensive findings regarding petitioner's

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A42-A43; in ordering the NAACP Legal Defense and Educational Fund, Inc. not to pay any of the sanctions imposed in this case, *id.* at A43-A44; and in determining that counsel had violated the North Carolina Rules of Professional Conduct, *id.* at A44-A45.

On November 14, 1990, the district court pursuant to the mandate of the court of appeals issued an amended judgment recalculating the award of sanctions in light of the court of appeals' decision. Pet. App. A611-A612; see also *id.* at A605-A610 (order on remand). In January 1991, pursuant to that judgment, the two sanctioned plaintiffs, Blue and Harris, paid the sanctions imposed against them.

failure to conduct an adequate investigation into the basis of asserted claims after obtaining voluminous discovery, a failure that persisted well after commencement of trial. See Pet. App. A29-A31.[5]

As the court of appeals observed, plaintiffs alleged wrongful race discrimination by hundreds of Army employees, white and black, and "accused the Army of engaging in discriminatory practices in virtually every aspect of civilian employment[.]" Pet. App. A9. But the massive documentation and extensive deposition testimony obtained by petitioner offered no foundation for the continued pursuit of these far-ranging claims. The district court found that had counsel analyzed the discovery materials supplied by the Army "to any professional degree, it is inconceivable that many of plaintiffs' claims would have been filed and clearly none would have been maintained after the close of discovery." *Id.* at A25 (quoting Pet. Supp. App. A498). The district court concluded that "[n]o reasonable attorney could possibly have hoped to prevail in this case." *Ibid.* (quoting Pet. Supp. App. A499). The court of appeals gave these findings the deference they were due. See Pet. App. A22-A23; *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct. 2447 (1990).

Petitioner's sanctionable conduct is exemplified by counsel's investigation of plaintiff Blue's claim that she was adversely affected by a pattern or practice of discrimination. That claim was asserted in Blue's complaint, in the

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[5] Petitioner cites this Court's decision in *Christiansburg Garment Co.* v. *EEOC*, 434 U.S. 412, 421-422 (1978), for the proposition that "it is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." Pet. 13-14. The court of appeals acknowledged the importance of – and cited and quoted – that very proposition. Pet. App. A15.

final pretrial order, and in her pretrial brief. But as the district court found, counsel "candidly conceded" during the trial on Blue's claims that plaintiffs' statistical expert "had not even analyzed the impact of the [allegedly discriminatory employment practice]." Thus, "even as late as the middle of her trial, Blue and her counsel had never properly reviewed the data to determine if her claim was statistically or legally cognizable." Pet. Supp. App. A271. The court found that "[t]his stunning failure, in a disparate impact claim dependent on statistical evidence constitutes * * * a blatant violation of the obligations imposed on counsel under 28 U.S.C. § 1927 and Fed. R. Civ. P. 11." Pet. Supp. App. A271-A272. See also Pet. App. A31 n.1 (noting "shocking" lack of statistical evidence); Pet. Supp. App. A300-A301 n.160 (finding that plaintiffs' pretrial statistical showing was "intellectually dishonest").

As the court of appeals held, and as the district court's decision makes plain, the award of sanctions against petitioner was based not on the district court's credibility findings, but on its finding that petitioner had failed to engage in an adequate investigation into the factual basis of asserted claims. See, *e.g.*, Pet. Supp. App. A499 n.268. The principle declared by the court of appeals is unexceptionable—that "counsel cannot simply rely on a client's patently incredible testimony when any reasonable investigation of the factual bases for the client's claims or examination of materials obtained in discovery would reveal the paucity and implausibility of the evidence." Pet. App. A31. Contrary to petitioner's contention, the Fourth Circuit's decision in this case is fully consistent with the decisions of other courts of appeals.[6]

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[6] See, *e.g.*, *Pantry Queen Foods, Inc.* v. *Lifschultz Fast Freight, Inc.*, 809 F.2d 451, 453 (7th Cir. 1987) (Rule 11 sanctions appropriate where counsel has not made a reasonable inquiry into facts before filing papers

The decision below does not conflict with *Williams* v. *Giant Eagle Markets, Inc.*, 883 F.2d 1184 (3d Cir. 1989), on which petitioner relies. Pet. 11, 16. There, the court of appeals explicitly found that counsel had reasonable grounds for believing that her client could prevail. 883 F.2d at 1192-1193. By contrast, in this case the district court found that counsel had engaged in a "wholesale failure to read, digest, and analyze the material handed to them" during discovery, Pet. Supp. App. A499 n.268, and that "[n]o reasonable attorney could possibly have hoped to prevail in this case," *id.* at A499, and the Fourth Circuit found no reason to disturb either finding. Petitioner quotes a later passage from *Williams* stating that a lawyer would not be subject to sanctions even if he knew that the defendant had an unchallengeable defense at the time suit was filed. Pet. 16 (quoting 883 F.2d at 1193). But the court's discussion of that question was dicta, given its earlier determination that the attorney had reason to believe that the plaintiff's claim was valid. In addition, the Fourth Circuit here agreed that "[s]anctions should normally not be imposed for *filing* a frivolous Title VII claim where at the start of the action there was a reasonable belief that a prima facie case existed." Pet. App. A21 (internal punctuation omitted). The

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with the court); *Nepera Chemical, Inc.* v. *Sea-Land Serv., Inc.*, 794 F.2d 688, 702 & n.105 (D.C. Cir. 1986) (sanctions appropriate under bad faith exception where a party brings or maintains an unfounded suit); *In re TCI, Ltd.*, 769 F.2d 441, 445 (7th Cir. 1985) ("If a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively unreasonable and vexatious."); *Dreiling* v. *Peugeot Motors of America, Inc.*, 768 F.2d 1159, 1165 (10th Cir. 1985) (sanctions awarded under Section 1927 where the parties and their attorney "continued to assert claims for liability against [defendant] with knowledge that they had no factual or legal basis or claim of liability against him, and did so long after it would have been reasonable and responsible to have dismissed the claims"). See also Pet. App. A34-A35 (citing these and other cases).

Fourth Circuit upheld the sanctions in this case since it involved "not simply the filing of a frivolous suit but also * * * the prolonged maintenance of a frivolous suit well after the close of discovery." *Ibid.* The *Williams* case does not foreclose an award of sanctions under those circumstances. Accordingly, there is no conflict between the Third and Fourth Circuits.

Petitioner also contends that the district court's findings were "tainted," Pet. 18-19, by its misformulation of one of the requirements necessary for a plaintiff to establish a prima facie case of discrimination. The court of appeals directly addressed that claim, correctly noting that the district court had repeatedly assumed that plaintiffs had established a prima facie case for each of their claims, yet nonetheless found the claims meritless. Pet. App. A20 ("The district court repeatedly emphasized that it found the claims to be meritless and frivolous 'even assuming' plaintiffs had established a prima facie case for each of their claims.") (citing 679 F. Supp. at 1288-1293, 1310 n.164, 1322).

Petitioner expresses concern that the decision of the court of appeals will adversely affect the enforcement of the civil rights laws. Pet. 16-18. The court of appeals was sensitive to and specifically considered this potential problem, but concluded that the harm to Title VII litigants might well be greater from a rule of law exempting them and their counsel from the generally applicable rules regarding the conduct of litigation. See Pet. App. A14-A18. As the court of appeals observed, the "authority which federal courts possess, an authority often summoned to the side of racial justice, is an authority built upon respect for the judicial process. That authority cannot, in the long run, be effectively invoked on behalf of civil rights enforcement if civil rights litigants could themselves disregard it with impunity." *Id.* at A16. Moreover, the decision is unlikely to have

any broad implications for Title VII litigation in light of the extremely fact-bound nature of the district court's findings and the extraordinary wrongdoing—including perjury, *id.* at A25-A26, A31-A33—that occurred in this case. See *id.* at A23-A24 ("It is impossible to gain a full appreciation for the manner in which this litigation was conducted without reading the district court's opinion in its entirety.").[7] At the same time, the court of appeals was correct in ruling that a plaintiff's ability to establish a prima facie case "does not render sanctions inappropriate for the continued litigation of an otherwise patently frivolous case." Pet. App. A19. Title VII did not suspend a lawyer's obligation to avoid baseless litigation, and "litigants and their counsel are not free, simply because they can meet the requirements of a prima facie case, to disregard evidence that comes to light in discovery and to continue to press their case without any reasonable belief that plaintiffs actually were the victims of racial discrimination." Pet. App. A19-A20.

2. Petitioner argues that even if his conduct was otherwise sanctionable, the government is statutorily barred from recovering attorney's fees for bad faith or frivolous litigation under Section 706(k) of Title VII, 42 U.S.C. 2000e-5(k). Pet. 19-28. That claim also does not warrant review by this Court.

There is no conflict among the circuits on this question. The only other circuits to have addressed this question are the District of Columbia and the Fifth Circuits, and both courts agreed that Section 706(k) does not preclude the government from obtaining attorneys' fees as a defendant in a Title VII case for bad faith litigation or frivolous litigation. See *Copeland* v. *Martinez*, 603 F.2d at 984-992; *Butler* v. *United States Department of Agriculture*, 826 F.2d at 414.

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[7] See also Pet. Supp. App. A574-A575 n.15 (noting instances of "profoundly disappointing" conduct by counsel).

The Fourth Circuit's decision in this case is fully consistent with those decisions. See Pet. App. A21-A22.

The decision below is also correct. As the D.C. Circuit explained in detail in *Copeland*, 603 F.2d at 984-992, the text of Section 706(k) does not expressly or impliedly repeal a district court's authority to award attorney's fees for frivolous or bad faith litigation, and neither the legislative history nor the purpose of Title VII supports such a conclusion. As the court of appeals explained in this case, the initiation or pursuit of baseless litigation is still a burden on the defendant and an affront to the federal courts when the federal government is the defendant. Pet. App. A22.

Petitioner relies on the legislative history of the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988. Pet. 21-23. That reliance is mistaken. Subsequent legislative history is generally a treacherous guide to congressional intent. See, *e.g.*, *Pierce* v. *Underwood*, 487 U.S. 552, 566-567 (1988). That principle applies with particular force in this context, because petitioner cites the subsequent legislative history of another statute, not Title VII. In any event, there is no merit to, and petitioner has provided no support for, his suggestion that in an action that may give rise to fee liability under Section 1988, the government may not receive attorney's fees as a sanction in the case of bad-faith litigation or violation of Rule 11, Rule 16, or 28 U.S.C. 1927.[8]

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[8] Moreover, the federal government generally cannot be a defendant on the merits in an action for which Section 1988 authorizes an award of attorneys' fees. See, *e.g.*, *Hohri* v. *United States*, 782 F.2d 227, 245 n.43 (D.C. Cir. 1986) ("These statutes [42 U.S.C. 1981, 1982, 1983, 1985 and 1986], by their terms, do not apply to actions against the United States."), vacated on other grounds, 482 U.S. 64 (1987).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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